Exhibit B

NATIONAL SECURITY PROJECT

ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION

June 23, 2011

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Office of the Inspector General
Central Intelligence Agency
Washington, DC 20505

FOIA/Privacy Act Office
Office of the Director of National Intelligence
Washington, DC 20511

Federal Bureau of Investigation
Attn: FOIA/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001

Carmen L. Mallon
Chief of Staff
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Matthew Miller
Director, Office of Public Affairs
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: REQUEST UNDER FREEDOM OF INFORMATION ACT / EXPEDITED PROCESSING REQUESTED

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Dear FOIA Officer,

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; the Privacy Act of 1974, 5 U.S.C. § 552a; the Central Intelligence Agency implementing regulations, 32 C.F.R. § 1900.1; the Office of the Director of National Intelligence implementing regulations, 32 C.F.R. § 1700.1; and the Department of Justice implementing regulations, 28 C.F.R. § 16.1, for any and all records naming or relating to John Ricardo "Juan" Cole, born on [redacted] Social Security Number [redacted].

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

The instant Request is submitted on behalf of the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, the "ACLU")[1]; the American Civil Liberties Union Fund of Michigan ("ACLU of Michigan"); and Professor Cole.

Enclosed is a Certification of Identity Form signed under penalty of perjury by Professor Cole, verifying that he is the person claimed on this Request and that he authorizes the release of information to the ACLU and the ACLU of Michigan. *See* 5 U.S.C. § 552a(b). This document authorizes you to process the Request and send the documentation requested to the undersigned.

Records Requested

Requesters seek the release of any and all documents naming or relating to Professor Juan Cole, a University of Michigan professor and academic commentator. The documents requested include, but are not limited to, any e-mails, letters, faxes, or other correspondence, memoranda, contemporaneous notes of meetings or phone calls, reports or any other material relating to the gathering, collecting, copying, collating, generating

[1] The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

or other use of information and material regarding Professor Cole, including any information or material that may have been gathered, collected, copied, collated, generated or otherwise used. This should include, but not be limited to, any requests or orders that information be gathered, any decisions regarding those requests or orders, any response or material responsive to those requests or orders or decisions regarding those requests or orders, and any inquiries about those processes. This should include, but not be limited to, any internal investigation of or discussion relating to federal government activity regarding and relating to Professor Cole. Personnel involved include, but are not limited to, Glenn L. Carle, David Low, David Gordon, John A. Kringen, and John D. Negroponte. The materials should include, but not be limited to, all relevant material generated by and directed toward those men, their assistants and staff. *See* James Risen, *Ex-Spy Alleges Bush White House Sought to Discredit Critic*, N.Y. Times, June 15, 2011, *available at* http://nyti.ms/ikPaQl. Naming these officials in no way should be construed to limit the search for relevant documents throughout the governmental entities to whom this Request is made.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, bates-stamped files.

Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), 32 C.F.R. § 1900.34(c), 32 C.F.R. § 1700.12, and 28 C.F.R. § 16.5(d). Expedited processing is warranted because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity, 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. §§ 1700.12(2), 1900.34(c)(2), and because the records sought relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

A. The requesters are primarily engaged in the dissemination of information

I. The ACLU is primarily engaged in the dissemination of information

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 32 C.F.R. § 1700.2(h)(4); 28 C.F.R. § 16.5(d)(1)(ii). Obtaining information about government activity, analyzing that information, and publishing and widely disseminating that information to the press and public (in both its raw and analyzed form) is a critical and substantial component of the ACLU's work and one of its primary activities. *See Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information" (internal citation omitted)).

Although the ACLU is perhaps most well known for its litigation activities, it is far more than a large public-interest law firm. The ACLU's principal mission is not to litigate important civil-rights and civil-liberties cases, but to preserve and defend the guarantees of the Bill of Rights and civil-rights laws, using litigation as just one of many tactics. Every aspect of the ACLU's work in furtherance of this mission—including litigation—can fairly be described as information dissemination. Indeed, public education and dissemination of information is a key component of the ACLU's litigation efforts; litigation is a highly effective vehicle for educating the press and public about civil-liberties problems.

Most ACLU cases have dedicated webpages through which the ACLU publishes and disseminates information about the cases themselves (*i.e.*, case developments, analyses of case developments, a comprehensive archive of court filings, and judicial opinions); these efforts, even standing alone, are a significant endeavor in publication and dissemination of news. Case webpages, however, do not just disseminate information about case developments; these webpages also have educational material about the particular civil-liberties issue or problem, recent news about the particular issue, analyses of congressional or executive-branch action on the particular issue, governmental documents obtained through FOIA about the particular issue, and more in-depth analytic and educational multimedia features on the issue. For example, the ACLU's website about its national-security-letter ("NSL") cases, http://www.aclu.org/nsl, includes, among other things, an explanation of what NSLs are; information about and document repositories for the ACLU's NSL cases; links to documents obtained through FOIA

about various agencies' use of NSLs; NSL news in the courts, Congress, and executive agencies; links to original blog posts commenting on and analyzing NSL-related news; educational web features about the NSL gag-order power; public education reports about NSLs and the Patriot Act; news about and analysis of the Department of Justice Inspector General's reviews of the FBI's use of NSLs; the ACLU's policy analysis and recommendations for reform of the NSL power; charts with analyzed data about the government's use of NSLs; "myths-and-facts" documents; and links to information and analysis of related issues.[2]

The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. Its material is available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

The ACLU also regularly issues press releases to call attention to documents released through FOIA and other breaking news. *See, e.g.*, Press Release, American Civil Liberties Union, *Important Electronic Privacy Information Legislation Introduced In Senate*, May 17, 2011, *available at* http://www.aclu.org/technology-and-liberty/important-electronic-privacy-information-legislation-introduced-senate; Press Release, American Civil Liberties Union, *Justice Department Asks Appeals Court To Reconsider Ruling Allowing Challenge To Warrantless Wiretapping Law*, May 13, 2011, *available at* http://www.aclu.org/national-security/justice-department-asks-appeals-court-reconsider-ruling-allowing-challenge-warrant; Press Release, American Civil Liberties Union, *New Reports on 9/11 Interrogation Tapes Underscore Need For Full Accountability And Transparency, Says ACLU*, Aug. 17, 2010, *available at* http://www.aclu.org/national-security/new-reports-911-interrogation-tapes-underscore-need-full-accountability-and-transp; Press Release, American Civil Liberties Union, *ACLU Files Lawsuit Challenging Unconstitutional "No Fly List"*, June 30, 2010, *available at* http://www.aclu.org/national-security/aclu-files-lawsuit-challenging-unconstitutional-no-fly-list; Press Release, American Civil Liberties Union, *ACLU Calls on Administration and Congress To Follow The Rule of Law In Terrorism Cases*, May 4, 2010, *available at* http://www.aclu.org/national-

[2] For a sampling of other similar case pages with case information, reporting of news on the issue, blogs, and original analytic and educational content, see: http://www.aclu.org/lgbt/relationships/californiamarriage.html (same-sex marriage case page); http://www.aclu.org/safefree/rendition/index.html (extraordinary rendition case page); http://www.aclu.org/immigrants/detention/hutto.html (immigration detention conditions case page).

security/aclu-calls-administration-and-congress-follow-rule-law-terrorism-cases; Press Release, American Civil Liberties Union, *Newly Released Documents Reveal Details of Civilian Casualty Claims in Afghanistan and Iraq*, Apr. 1, 2010, *available at* http://www.aclu.org/national-security/newly-released-documents-reveal-details-civilian-casualty-claims-afghanistan-and-i; Press Release, American Civil Liberties Union, *Most Guantanamo Detainees Were Not Involved In Plots Against U.S., Report Reveals*, May 29, 2010, *available at* http://www.aclu.org/national-security/most-guantanamo-detainees-were-not-involved-plots-against-us-report-reveals; Press Release, American Civil Liberties Union, *ACLU Files Habeas Corpus Petitions On Behalf Of Four Bagram Detainees*, Feb. 26, 2010, *available at* http://www.aclu.org/national-security/aclu-files-habeas-corpus-petitions-behalf-four-bagram-detainees; Press Release, American Civil Liberties Union, *Internal Report Finds Flagrant National Security Letter Abuse By FBI*, Jan. 20, 2010, *available at* http://www.aclu.org/national-security/internal-report-finds-flagrant-national-security-letter-abuse-fbi.

ACLU attorneys are frequently quoted in news stories about documents requested or released through ACLU FOIA requests. *See, e.g.*, Joshua E.S. Phillips, *Inside the Detainee Abuse Task Force*, The Nation, May 30, 2011 (quoting ACLU staff attorney Alexander Abdo); Scott Shane & Benjamin Weiser, *Dossier Shows Push for More Attacks After 9/11*, N.Y. Times, Apr. 25, 2011 (quoting ACLU project director Hina Shamsi); Eric Lichtblau, *Court Revives Lawsuit Over Government Surveillance*, N.Y. Times, Mar. 21, 2011 (quoting ACLU deputy legal director Jameel Jaffer).

The ACLU regularly publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is distributed to approximately 300,000 people. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *Cf. Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding EPIC to be a representative of the news media under Department of Defense regulations because it published a "bi-weekly electronic newsletter that is distributed to over 15,000 readers" about "court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements"); *Ctr. for Pub. Integrity v. Dep't of Health & Human Servs.*, No. 06-1818 (JDB), 2007 WL 2248071, at *5 (D.D.C. Aug. 3, 2007) (finding CPI to be a news-media requester

because its journalist members "write and post an online newsletter" and post information obtained through FOIA in that newsletter); 32 C.F.R. § 286.28(e)(7)(i) ("The term 'representative of the news media' refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public [including] publishers of periodicals").

The ACLU regularly publishes reports about governmental activity and civil-liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA.[3] This material is broadly circulated to the public and

[3] *See, e.g.*, *Policing Free Speech: Police Surveillance and Obstruction of First Amendment-Protected Activity* (Aug. 2010), *available at* http://www.aclu.org/files/assets/policingfreespeech_20100806.pdf; *Establishing A New Normal: National Security, Civil Liberties, and Human Rights Under the Obama Administration* (July 2010), *available at* http://www.aclu.org/files/assets/EstablishingNewNormal.pdf; *Report of the American Civil Liberties Union on the Nomination of Elena Kagan to be Associate Justice of the U.S. Supreme Court* (June 2010), *available at* http://www.aclu.org/files/assets/2010-6-21-KaganReport-SCOTUS.pdf; *Sentenced to Stigma* (Apr. 2010), *available at* http://www.aclu.org/files/assets/health0410webwcover.pdf; *America Unrestored* (Jan. 2010), available at http://www.aclu.org/files/pages/americaunrestored_11_20100119.pdf; *Mental Illness and the Death Penalty* (May 2009), *available at* http://www.aclu.org/pdfs/capital/mental_illness_may2009.pdf; *Human Rights Begin at Home* (Apr. 2009), available at http://www.udhr60.org/human_rights_full.pdf; *Reclaiming Patriotism* (Mar. 2009), *available at* http://www.aclu.org/pdfs/safefree/patriot_report_20090310.pdf; *Missing the Mark: Alternative Schools in the State of Mississippi* (Feb. 2009), *available at* http://www.aclu.org/pdfs/racialjustice/missingthemark_report.pdf.; *A Looming Crisis* (Dec. 2008), *available at* http://www.aclum.org/lockingupkids/pdf/looming_crisis_web.pdf; *De Facto Disenfranchisement* (Oct. 2008), *available at* http://www.aclu.org/pdfs/racialjustice/defactodisenfranchisement_report.pdf ; *A Violent Education: Corporal Punishment of Children in U.S. Public Schools* (Aug. 2008), *available at* http://www.aclu.org/pdfs/humanrights/aviolenteducation_report.pdf; *Fusion Center Update* (July 2008), *available at* http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf; *Enacting a Reasonable Federal Shield Law (*July 2008), *available at* http://www.aclu.org/images/asset_upload_file113_35870.pdf; *Locking Up Our Children* (May 2008), *available at*

available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, and law students and faculty, for no cost or for a nominal fee. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding EPIC a news-media requester because it "researches issues on privacy and civil liberties, reports on this information, analyzes relevant data, evaluates the newsworthiness of material and puts the facts and issues into context,

http://www.aclu.org/pdfs/racialjustice/locking_up_our_children_web_ma.pdf; *Pandemic Preparedness: The Need for a Public Health—Not a Law Enforcement/National Security—Approach* (Jan. 2008), *available at* http://www.aclu.org/images/asset_upload_file399_33642.pdf; *Race & Ethnicity in America: Turning a Blind Eye to Injustice* (Dec. 2007), *available at* http://www.aclu.org/pdfs/humanrights/cerd_full_report.pdf; *What's Wrong With Fusion Centers?* (Dec. 2007), *available at* http://www.aclu.org/pdfs/privacy/fusioncenter_20071212.pdf; *The Excluded: Ideological Exclusion and the War on Ideas* (Oct. 2007), *available at* http://www.aclu.org/pdfs/safefree/the_excluded_report.pdf; *Reclaiming Our Rights: Declaration of First Amendment Rights and Grievances* (Sept. 2007), *available at* http://www.aclu.org/images/asset_upload_file955_36822.pdf; *The Emerging Surveillance Society: Where Are We Now?* (Sept. 2007), *available at* http://www.aclu.org/pdfs/privacy/bigger_weaker.pdf; *Working in the Shadows: Ending Employment Discrimination for LGBT Americans* (Sept. 2007), available at http://www.aclu.org/pdfs/lgbt/enda_20070917.pdf; *Broken Promises: Two Years After Katrina* (Aug. 2007), *available at* http://www.aclu.org/pdfs/prison/brokenpromises_20070820.pdf; *The Persistent Problem of Racial Disparities in the Federal Death Penalty* (June 2007), *available at* http://www.aclu.org/pdfs/capital/racial_disparities_federal_deathpen.pdf; *Conditions of Confinement in Immigration Detention Facilities (*June 2007), *available at* http://www.aclu.org/pdfs/prison/unsr_briefing_materials.pdf; *History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement* (May 2007), *available at* http://www.aclu.org/images/asset_upload_file893_29902.pdf; *Disavowed: The Government's Unchecked Retaliation Against National Security Whistleblowers* (May 2007), *available at* http://www.aclu.org/pdfs/safefree/disavowed_report.pdf; *A Blueprint for Meeting the Needs of Girls in TYC Custody* (May 2007), *available at* http://www.aclu.org/images/asset_upload_file373_29875.pdf; *Religious Refusals and Reproductive Rights: Accessing Birth Control at the Pharmacy* (Apr. 2007), *available at* http://www.aclu.org/images/asset_upload_file576_29402.pdf; *Criminalizing the Classroom* (March 2007), *available at* http://www.nyclu.org/files/criminalizing_the_classroom_report.pdf.

publishing and distributing this 'news' through the sale of its books to the public"); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (finding National Security Archive to be a news-media requester because it intended to publish "document sets" on "topic[s] of current interest").[4]

The ACLU also regularly publishes books, "know your rights" publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil-liberties issues and governmental policies that implicate civil rights and liberties. Some of the recent books published by the ACLU include: Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women's Rights* (NYU Press 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007) (a book based on documents obtained through FOIA).[5] Some of the more recent "know your rights" publications include: *Gender-Based Violence & Harassment: Your School, Your Rights* (May 2011), *available at* http://www.aclu.org/files/assets/genderbasedviolence_factsheet_0.pdf; *Know Your Options at the Airport* (Nov. 2010), *available at* http://www.aclu.org/files/assets/aclu_know_your_options_at_airport_nov2010.pdf; *Know Your Rights: What to Do If You're Stopped by Police, Immigation Agents or the FBI* (June 2010), *available at* http://www.aclu.org/files/assets/bustcard_eng_20100630.pdf. Some of the more recent ACLU fact sheets include: *Military Abortion Ban in Cases of Rape and Incest (Factsheet)* (May 13, 2011), *available at* http://www.aclu.org/reproductive-freedom/military-abortion-ban-cases-rape-and-incest-factsheet; *The Facts About "The No taxpayer Funding For Abortion Act"* (Apr. 2011), *available at* http://www.aclu.org/files/assets/Chris_Smith_bill-_ACLU_Fact_Sheet-_UPDATED-4-30-11.pdf.[6] These materials are specifically designed to be

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

[4] In addition to the national ACLU offices, there are 53 ACLU affiliate and national-chapter offices located throughout the United States and Puerto Rico, including the ACLU of Michigan. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived material available at the American Civil Liberties Union Archives at the Princeton University Library.

[5] A search of Amazon.com conducted on June 21, 2011 produced over 50 books published by the ACLU.

[6] For many more ACLU fact sheets on various civil liberties topics see: http://www.aclu.org/safefree/relatedinformation_fact_sheets.html,

educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding EPIC to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties); *Nat'l Sec. Archive*, 880 F.2d at 1386 (finding the National Security Archive to be a news-media requester where it had previously published only one book); *see also Leadership Conference on Civil Rights v. Gonzalez*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference on Civil Rights to be "primarily engaged in the dissemination of information" because it "disseminate[d] information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement by the Department of Justice").

The ACLU operates a widely-read blog where original editorial content reporting on and analyzing civil-rights and civil-liberties news is posted daily. *See* http://blog.aclu.org/. The ACLU also creates and disseminates original editorial and educational content on civil-rights and civil-liberties news through multimedia projects, including videos, podcasts, and interactive features. *See* http://www.aclu.org/multimedia/index.html.

The ACLU also disseminates information through its website, www.aclu.org. The website addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains hundreds of documents that relate to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, the ACLU also provides the public with educational material about the particular civil liberties issue or problem; recent news about the issue; analyses of Congressional or executive branch action on the issue; government documents obtained through FOIA about the issue; and more in-depth analytic and educational multimedia features on the issue.

The ACLU website specifically includes features on information obtained through FOIA, including: http://www.aclu.org/torturefoia; http://www.aclu.org/olcmemos/;

http://www.aclu.org/lgbt/relatedinformation_fact_sheets.html, http://www.aclu.org/privacy/relatedinformation_fact_sheets.html, http://www.aclu.org/womensrights/relatedinformation_fact_sheets.html, http://www.aclu.org/reproductiverights/relatedinformation_fact_sheets.html, and http://www.aclu.org/intlhumanrights/relatedinformation_fact_sheets.html.

http://www.aclu.org/safefree/torture/csrtfoia.html; http://www.aclu.org/natsec/foia/search.html; http://www.aclu.org/safefree/nsaspying/30022res20060207.html; http://www.aclu.org/patriotfoia; www.aclu.org/spyfiles; http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html ; http://www.aclu.org/exclusion. For example, the ACLU's "Torture FOIA" webpage, http://www.aclu.org/torturefoia, contains commentary about the ACLU's FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA, and advises that the ACLU in collaboration with Columbia University Press has published a book about the documents obtained through the FOIA. Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos it obtained through FOIA, http://www.aclu.org/safefree/general/olc_memos.html, contains commentary and analysis of the memos; an original comprehensive chart about OLC memos (see below); links to web features created by ProPublica—an independent, non-profit, investigative-journalism organization—based on information gathering, research, and analysis conducted by the ACLU; and ACLU videos created about the memos. *See Nat'l Sec. Archive*, 880 F.2d at 1386 (finding the National Security Archive to be a news-media requester because it intended to publish "document sets" whereby its staff would "cull those of particular interest . . . supplement the chosen documents with 'detailed cross-referenced indices, other finding aids, and a sophisticated computerized retrieval system' in order to make it more accessible to potential users"); *Judicial Watch, Inc. v. Dep't of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2005) (finding Judicial Watch to be a news-media requester because it posted documents obtained through FOIA on its website).

The ACLU has also published a number of charts that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU has created an original chart that provides the public and news media with a comprehensive index of Bush-era OLC memos relating to interrogation, detention, rendition, and surveillance. The chart describes what is publicly known about the memos and their conclusions, who authored them and for whom, and whether the memos remain secret or have been released to the public in whole or in part. It is available at http://www.aclu.org/safefree/general/olcmemos_chart.pdf. Similarly, the ACLU produced a chart of original statistics about the Defense Department's use of NSLs based on its own analysis of records obtained through FOIA. That chart is available at http://www.aclu.org/safefree/nationalsecurityletters/released/nsl_stats.pdf.

See Nat'l Sec. Archive, 880 F.2d at 1387 (explaining that the National Security Archive is a news-media requester because it obtained "documents for its own purpose, which is to assemble them, along with documents from other sources, into an encyclopedic work that it will then offer to the public"); *id.* (explaining that the National Security Archive is a news-media requester because it "gather[ed] information from a variety of sources; exercise[d] a significant degree of editorial discretion in deciding what documents to use and how to organize them; devise[d] indices and finding aids; and distribute[d] the resulting work to the public").

The ACLU has also produced an in-depth television series on civil liberties called "The Freedom Files." *See* http://aclu.tv/. The Freedom Files is a series of half-hour documentaries that features true stories about real people to highlight vital civil-liberties issues, and includes commentary and analysis from experts on particular civil-liberties problems; some portions also include explanation and analysis of information the ACLU has obtained through FOIA. *See* http://aclu.tv/episodes. In addition to distribution through the ACLU's website, The Freedom Files series aired on Court TV, Link TV, and PBS stations nationwide. With each episode, the ACLU distributed fact sheets, reports, and FAQs. *See* http://aclu.tv/educate. The second season of The Freedom Files came with a teacher's guide as well. *See* http://aclu.tv/teachersguide.

ACLU attorneys also frequently speak at conferences, before community groups and in academic settings.

In sum, the ACLU actively gathers news and information, analyzes it, creates distinct works, publishes that information, and disseminates it widely to the public. The ACLU plainly qualifies as an organization primarily engaged in the dissemination of information for FOIA's expedited processing purposes.

Courts have found organizations with missions similar to the ACLU's and that engage in information-dissemination activities similar to the ACLU's to be "primarily engaged in disseminating information." *See, e.g.*, *Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260 (finding Leadership Conference—whose mission is "to serve as the site of record for relevant and up-to-the minute civil rights news and information" and to "disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws . . ."—to be "primarily engaged in the dissemination of information"); *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d at 29 n.5 (finding non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into

a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information" (internal citation omitted)).[7]

II. The ACLU of Michigan is primarily engaged in the dissemination of information

Like the ACLU, the ACLU of Michigan disseminates information about its cases, campaigns, issues and activities through its website. *See* www.aclumich.org. Additionally, the ACLU of Michigan publishes a newsletter at least twice a year, holds news conferences, produces know-your-rights materials for the public, and maintains a blog on civil liberties issues.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

The ACLU of Michigan also regularly issues press releases to call attention to FOIA requests, documents released through FOIA requests, and other breaking news. *See, e.g.*, Press Release, American Civil Liberties Union Fund of Michigan, *ACLU Seeks ICE Records on Illegal Detention of U.S. Citizens and Legal Permanent Resident*, May 25, 2011, *available at* http://www.aclumich.org/issues/immigrant-rights/2011-05/1562; Press Release, American Civil Liberties Union Fund of Michigan, *ACLU Seeks Records About State Police Searches of Cellphones*, Apr. 13, 2011, *available at* http://www.aclumich.org/issues/privacy-and-technology/2011-04/1542; Press Release, American Civil Liberties Union Fund of Michigan, *ACLU Seeks Records About Emergency Financial Manager Law*, Apr. 7, 2011, *available at* http://www.aclumich.org/issues/free-speech/2011-04/1538; Press Release, American Civil Liberties Union Fund of Michigan, *ACLU Seeks Records About FBI Collection Of Racial and Ethnic Data in Michigan*, July 27, 2010, *available at* http://www.aclumich.org/issues/post-9-11-activity/2010-07/1458.

The ACLU of Michigan's FOIA requests on pressing civil liberties issues are frequently covered in news stories. *See, e.g.*, *ACLU-Michigan*

[7] Notably, other agencies routinely grant the ACLU's requests for expedited processing of FOIA requests, therefore recognizing that the ACLU is primarily engaged in disseminating information. In the past five years, the ACLU has been granted expedited processing by the FBI (June 2011), the Office of Information Policy of the Department of Justice (June 2011), the Office of Legal Counsel of the Department of Justice (June 2011), the National Security Division of the Department of Justice (June 2011 and May 2009), the Department of Justice (December 2008), the National Security Agency (October 2008), the Department of the Army (July 2006), the Defense Intelligence Agency (March 2006), the Civil Division of the Department of Justice (March 2006), and the Department of Justice's Office of Information and Privacy (January 2006).

Seeks ICE Records on Illegal Detention of U.S. Citizens, TheArabAmericanNews.com, May 28, 2011 (quoting ACLU of Michigan Staff Attorney Miriam Aukerman); Graeme McMillan, *Are Police In Michigan Stealing Cellphone Info?*, TIME.com, Apr. 19, 2011 (quoting ACLU of Michigan Racial Justice Project attorney Mark Fancher); Dawson Bell, *Michigan ACLU Questions Think Tank's Role in Emergency Financial Manager Bill*, Detroit Free Press, Apr. 8, 2011 (quoting ACLU of Michigan Executive Director Kary Moss).

The ACLU of Michigan regularly publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 23,000 people. The ACLU of Michigan also publishes a monthly electronic newsletter, which is distributed to approximately 15,000 subscribers (both ACLU of Michigan members and non-members) by e-mail.

The ACLU of Michigan also publishes reports about governmental activity and civil-liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. *See, e.g.*, *Reclaiming Michigan's Throwaway Kids: Students Trapped in the School-to-Prison Pipeline* (June 2009), *available at* http://www.aclumich.org/sites/default/files/file/ACLUSTPP.pdf; *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (Sept. 2004), *available at* http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf. This material is broadly circulated to the public and available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, and law students and faculty, for no cost.

The ACLU of Michigan also disseminates information through its website, www.aclumich.org, which receives approximately 25,000 monthly visitors. The website addresses civil-liberties issues in depth, provides features on civil-liberties issues in the news, and contains many documents that relate to the issues on which the ACLU of Michigan is focused. The website also features a blog where original editorial content reporting on and analyzing civil-rights and civil-liberties news is posted weekly. *See* http://www.aclumich.org/blog.

ACLU of Michigan attorneys also frequently speak at conferences, before community groups and in academic settings.

In sum, like the ACLU, the ACLU of Michigan actively gathers news and information, analyzes it, creates distinct works, publishes that information, and disseminates it widely to the public. The ACLU of

Michigan plainly qualifies as an organization primarily engaged in the dissemination of information for FOIA's expedited processing purposes.

III. Professor Cole is primarily engaged in the dissemination of information

Professor Cole qualifies as a news media requester for the expedited processing purposes of FOIA. He regularly analyzes and distributes information and news about history, religion, and the Middle East, including the United States' role in Middle Eastern affairs, through his widely read blog, *Informed Comment*. *See* http://www.juancole.com/.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Professor Cole also contributes articles to print and online news organs and to blogs besides his own. *See, e.g.*, *Egypt's Class Conflict: The Elite and Everyone Else*, MidEastPosts, Jan. 31, 2011, http://bit.ly/jzcxcC. Professor Cole is a frequent contributor at the Nation, *see, e.g.*, *An Arab Spring for Women*, The Nation, Apr. 26, 2011, *available at* http://bit.ly/mPBbnq; *An Open Letter to the Left on Libya*, The Nation, Mar. 28, 2011, *available at* http://bit.ly/m9nExT; *American Policy's Corruption Game*, The Nation, Jan. 25, 2011, *available at* http://bit.ly/iquJR1; *Obama in Asia*, The Nation, Nov. 11, 2010, *available at* http://bit.ly/k9MpQS; as well as at Truthdig, *see*, *e.g.*, *Starship Amerika*, Truthdig, Apr. 19, 2011; *The Sleeping Giants of Tiny Bahrain*, Truthdig, Mar. 29, 2011; and at *Salon*, *see, e.g.*, *Netanyahu Moves Forward on Colonizing West Bank*, Salon, Apr. 23, 2010, *available at* http://bit.ly/m06SIv; *Misreading the Quran to Threaten the "South Park" Guys*, Salon, Apr. 22, 2010, *available at* http://bit.ly/mzULty; *Why Economic Sanctions on Iran Won't Work*, Salon, Apr. 19, 2010, *available at* http://bit.ly/ljbmCl; *Some Terrorist Groups Can Survive Assassinations*, Salon, Apr. 15, 2010, *available at* http://bit.ly/m3nr9Z; *Israeli Regulations Authorize Mass Expulsion of Palestinians*, Salon, Apr. 12, 2010, *available at* http://bit.ly/irgU9P.

Professor Cole publishes op-ed pieces in major national and international newspapers on issues relating to religion and conflict in the Middle East and the United States' involvement in Iraq and Afghanistan. *See, e.g.*, *US Embassy Cables: Verdicts on the Leaks About the Middle East*, Guardian, Nov. 29, 2010, *available at* http://bit.ly/liW8U2; *It Takes a Following to Make an Ayatollah*, Wash. Post, Aug. 15, 2004, *available at* http://wapo.st/mhArCp; *Losing the War of Images*, S.F. Chron., May 9, 2004, *available at* http://bit.ly/kJQ1Zk; *The Iraqi Shiites*, Boston Review, Oct./Nov. 2003, *available at* http://bit.ly/mJO1Kz.

Professor Cole has published a number of books, chapters and articles on history, religion, and the Middle East. *See e.g.*, *Shi`ite Parties and the Democratic Process in Iraq,* in *Political Change in the Arab Gulf States: Stuck in Transition* (Mary Ann Tetreault, Gwen Okruhlik, and

Andrzej Kapiszewski, eds. 2011); *Iran and Islam*, in *The Iran Primer: Power, Politics, and U.S. Policy* (Robin Wright, ed. 2010); *Engaging the Muslim World* (Palgrave Macmillan 2009); *Iraq and the Israeli-Palestinian Conflict in the Twentieth Century*, Macalester Int'l, Vol. 23 (Spring 2009); *The Taliban, Women and the Hegelian Private Sphere*, in *The Taliban and the Crisis of Afghanistan* (Robert D. Crews and Amin Tarzi, eds. 2008); *Islamophobia and American Foreign Policy*, in *Islamophobia and the Challenges of Pluralism in the 21st Century* (Georgetown Univ. 2008); *The Ayatollahs and Democracy in Contemporary Iraq* (Amsterdam Univ. Press 2006); *Sacred Space and Holy War: The Politics, Culture and History of Shi'ite Islam* (I.B. Tauris 2002).

Professor Cole also makes regular media appearances and is frequently interviewed on issues relating to al-Qaeda and the Taliban, the Iraq War, the politics of Pakistan and Afghanistan, and Iranian domestic struggles and foreign affairs. *See, e.g.*, Interview by Grant Reeher with Juan Cole, *Campbell Conversations*, WRVO, May 9, 2011, *available at* http://bit.ly/ltfYKk; Interview by Rachel Maddow with Juan Cole, The Rachel Maddow Show, Mar. 28, 2009, *available at* http://on.msnbc.com/ivSGnJ; Interview by Riz Khan with Juan Cole, *Challenging US Views on Islam*, Al Jazeera, Mar. 25, 2009, *available at* http://bit.ly/m1IBe6; Interview by Ray Suarez with Juan Cole, *Differing Views On Bush's Legacy*, PBS News Hour, Dec. 15, 2008, *available at* http://to.pbs.org/mobafd.

B. The requested records are urgently needed to inform the public about federal-government activity

We make this Request primarily to retrieve information about federal government discussions of, correspondence regarding, inquiries about, and investigations of Professor Juan Cole, and any information or materials collected, collated, copied, gathered or generated relating to Professor Cole. The Request also aims to retrieve information to further the public's understanding of the U.S. government's investigative and surveillance practices. The records requested here are urgently needed to inform the national debate about U.S. accountability with respect to the unlawful investigation and surveillance of its citizens and high-level responsibility for the abuse of that authority. Information relating to the application of the federal government's investigation and surveillance authorities has been the subject of continuous and widespread public and media attention for some time. Furthermore, expedited processing is warranted because the records requested also relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

Professor Cole is a figure of public interest due to his status as a public academic commentator. As demonstrated above, he regularly engages in ongoing discussions regarding controversial American policies and has long been dynamically involved with the national media. He received additional media attention in June 2006 while under consideration for a faculty appointment at Yale University. *See* Philip Weiss, *Burning Cole*, The Nation, June 16, 2006, *available at* http://bit.ly/lChcu6; Scott Jaschik, *Blackballed at Yale*, Inside Higher Ed., June 5, 2006, *available at* http://bit.ly/jpFpKE; *Univ. Denies Cole Tenure*, Yale Daily News, June 10, 2006, *available at* http://bit.ly/kpXXw7.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

On June 15, 2011, the *New York Times* reported on its front page that Glenn Carle, a former CIA counterterrorism official, disclosed that he had been assigned to unlawfully gather information on Professor Cole in order to discredit him. *See* James Risen, *Ex-Spy Alleges Bush White House Sought to Discredit Critic*, N.Y. Times, June 15, 2011, *available at* http://nyti.ms/iCzrYy. That disclosure prompted significant media attention. *See, e.g.*, Editorial, *Investigate Bush Team's Effort To Use CIA Against Blogger*, Boston Globe, June 18, 2011, *available at* http://nyti.ms/iCzrYy; *Did the Bush White House Ask the CIA to Discredit a U.S. College Professor?*, CNN Blog, June 17, 2011, http://bit.ly/kGCecr; *Ex-Spy Says U.S. Officials Went After Iraq Critic: Report*, AFP, June 17, 2011, *available at* http://bit.ly/mkVfuq; Niraj Warikoo, *University of Michigan Professor Wants Investigation Into Claim By Former Official That White House Asked CIA to Smear Him*, Detroit Free Press, June 17, 2011, *available at* http://bit.ly/kKXaFN; Eartha Jane Melzer, *U-M Professor Calls for Investigation of Alleged CIA Spying Against Him*, Mich. Messenger, June 16, 2011, *available at* http://bit.ly/j5bOEA; Spencer Ackerman, *Report: Bush White House Wanted CIA to Discredit Blogger*, Wired, June 16, 2011, *available at* http://bit.ly/lOrCxk; *Former CIA Officer: Bush Admin Tried to Smear Prominent Academic, War Critic*, Democracy Now!, June 16, 2011, *available at* http://bit.ly/lOrCxk; John Hudson, *Bush-Era Spy Says White House Tried to Smear Juan Cole*, Atlantic Wire, June 16, 2011, *available at* http://bit.ly/kcep3L; Emma Mustich, *Did the CIA Spy on Iraq War Critic Juan Cole?*, Salon, June 16, 2011, *available at* http://bit.ly/leNodz; Andrew Sullivan, *The Politics of Personal Destruction*, Daily Beast, June 16, 2011, *available at* http://bit.ly/ixBkHQ; Natasha Lennard, *A Juan Cole Reading List, 2005-2006*, Salon, June 16, 2011, *available at* http://bit.ly/jOAPCX; Kevin Drum, *Bush v. Cole*, Mother Jones, June 15, 2011, *available at* http://bit.ly/mrANtM.

The requested records are particularly crucial to the national debate as the Senate Intelligence Committee begins to investigate CIA officials' involvement in the decision to unlawfully spy on Professor Cole. *See, e.g.*, Joan McCarter, *Senate Intelligence Committee Probing Bush CIA Targeting*

of Iraq War Critic, Daily Kos, June 20, 2011, *available at* http://bit.ly/m1IGjH; *Investigation Opens on Bush-Era Attempts to Discredit Iraq War Critic, Professor Juan Cole*, Democracy Now!, June 20, 2011, *available at* http://bit.ly/khFWE1; Marisa Schultz, *Senate Committee to Review Claims bush Administration Spied on U-M Professor*, Detroit News, June 18, 2011, *available at* http://bit.ly/jyCVQR; Zachary Roth, *Senate to Probe Charges That Bush White House Pressed CIA to Dig Up Dirt on Iraq War Critic*, Yahoo News Blog, June 17, 2011, *available at* http://yhoo.it/jcJD1y; Greg Sargent, *Senate Intel Committee Probing Whether Bush Officials Sought to Smear Iraq War Critic*, Washington Post Blog: The Plum Line, June 17, 2011, *available at* http://wapo.st/iJw8XT.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Furthermore, the requested records are particularly important given the ongoing debate about the appropriate scope of the government's surveillance authorities inside the United States. *See, e.g.*, Editorial, *Backward at the F.B.I.*, N.Y. Times, June 18, 2011, *available at* http://nyti.ms/kopkXZ; Adam Martin, *The New Powers the FBI Just Granted Itself*, Atlantic Wire, June 13, 2011, *available at* http://bit.ly/j6sqJ5; Charlie Savage, *F.B.I. Agents Get Leeway to Push Privacy Bounds*, N.Y. Times, June 12, 2011, *available at* http://nyti.ms/jZ6LF9; *Congress Delays Debate on Patriot Act and Privacy*, Boston Globe, Feb. 17, 2011, *available at* http://bo.st/e7KfpU; Charlie Savage, *As Online Communications Stymie Wiretaps, Lawmakers Debate Solutions*, N.Y. Times, Feb. 17, 2011, *available at* http://nyti.ms/fstGt4; Pete Yost, *FBI's Push to Clarify Electronic Authority Raises Privacy Concerns*, Wash. Post, Aug. 2, 2010, *available at* http://wapo.st/9M7L9o; Ellen Nakashima, *Dispute Brewing on Web Data Access: Critics Decry Obama Plan to Aid FBI Probes*, Boston Globe, Aug. 1, 2010, *available at* http://bo.st/bBvhVq; Editorial, *Breaking a Promise on Surveillance*, July 29, 2010, *available at* http://nyti.ms/bLJPVb; Ellen Nakashima, *Group Challenging Enhanced Surveillance Law Faces Uphill Climb*, Wash. Post, Apr. 19, 2010, *available at* http://wapo.st/f3gG89; Editorial, *Spying, Civil Liberties, and the Courts*, N.Y. Times, Apr. 15, 2010, *available at* http://nyti.ms/bCAslP; Editorial, *When It Comes to Terror, We Can't Tell You*, N.Y. Times, Apr. 3, 2010, *available at* http://nyti.ms/aha79c.

Application for Waiver or Limitation of Fees

A. A waiver of search, review, and reproduction fees is warranted under 5 U.S.C. § 552(a)(4)(A)(iii), 32 C.F.R. § 1900.13(b)(2), 32 C.F.R. § 1700.6(b)(2); and 28 § 16.11(k)(1).

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 32 C.F.R. § 1700.6(b)(2); 28 C.F.R. § 16.11(k)(1).

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

The requesters are making this Request specifically to retrieve any and all documents relating to Professor Juan Cole and, in doing so, further the public's understanding of the government's use of surveillance powers inside the United States. As the dozens of news articles cited above make clear, disclosure of the requested records will contribute significantly to public understanding of the operations and activities of the government. *See* 32 C.F.R. § 1900.13(b)(2)(ii); 32 C.F.R. § 1700.6(b)(2); 28 C.F.R. § 16.11(k)(1)(i). Moreover, disclosure is not in the requesters' commercial interest. Any information disclosed by the requesters as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act").

B. A waiver of search and review fees is warranted under 5 U.S.C. § 552(a)(4)(A)(ii), 32 C.F.R. §§ 1700.6(i)(2) and 1900.13(i)(2), and 28 C.F.R. § 16.11(c)(1)-(3), (d)(1).

A waiver of search and review fees is warranted because the requesters qualify as "representatives of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii). The ACLU and the ACLU of Michigan are representatives of the news media in that they are organizations "actively gathering news for an entity that is organized and operated to publish or broadcast news to the public," where "news" is defined as "information that is about current events or that would be of

current interest to the public." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. §§ 1700.2(h)(4), 1900.02(h)(3); 28 C.F.R. § 16.11(b)(6). The ACLU and the ACLU of Michigan meet the statutory and regulatory definitions of "representatives of the news media" because they are "entit[ies] that gather[] information of potential interest to a segment of the public, use[their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat'l Sec. Archive*, 880 F.2d at 1387 (finding that an organization that "gathers information from a variety of sources," exercises editorial discretion in selecting and organizing documents, "devises indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for the purposes of FOIA); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU and the ACLU of Michigan are "representatives of the news media" for the same reasons that they are "primarily engaged in the dissemination of information." *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).[8] Indeed, the ACLU of Washington recently was held to

[8] On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media." In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the Department of State granted a fee waiver to the ACLU with respect to its request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In May 2005, the Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with respect to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003. Finally, three

be a "representative of the news media." *Am. Civil Liberties Union of Wash. v. Dep't of Justice*, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011).

Professor Cole is a representative of the news media under the statutory definition and implementing regulations. Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.11(d) (search and review fees shall not be charged to "representatives of the news media"); *id.* § 16.11(c)(3) (review fees charged only for "commercial use request[s]").

* * *

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Pursuant to applicable statue and regulations, we expect a determination regarding expedited processing within ten calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 32 C.F.R. § 1700.12(b); 28 C.F.R. § 16.5(d)(4); *see also* 5 U.S.C. § 552a(d)(2)(A).

If this FOIA Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please be advised that because we are requesting expedited processing under FBI implementing regulations section 16.5(d)(1)(ii) as well as section 16.5(d)(1)(iv), we are sending a copy of this letter to DOJ's Office of Public Affairs. Notwithstanding Mr. Miller's determination, we look forward to your reply within 20 business days, as the statute requires under section 552(a)(6)(A)(I).

Thank you for your prompt attention to this matter.

Please furnish the applicable records to:

separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Zachary Katznelson
American Civil Liberties Union Foundation
18th Floor
125 Broad Street
New York, NY 10004

I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

[redacted]

ZACHARY KATZNELSON
American Civil Liberties Union
Foundation
125 Broad St.
New York, NY 10004
Tel. 212-549-2622
Fax. 212-549-2654

[redacted]

MICHAEL J. STEINBERG
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
Tel. 313-578-6800
Fax. 313-578-6811

[redacted]

JUAN COLE
2725 Haven Hall
505 South State Street
Ann Arbor, MI 48109
Tel. 734-763-1599
Fax. 734-647-4881

Encl.

U.S Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

[redacted]

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester [1] John "Juan" Ricardo Gle

Citizenship Status [2] citizen Social Security Number [3] [redacted]

Current Address [redacted]

Date of Birth [redacted] Place of Birth [redacted]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than $5,000.

Signature [4] [redacted] Date 23 June 2011

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

American Civil Liberties Union; American Civil Liberties Union Foundation; American Civil Liberties Union of Michigan

Print or Type Name JOHN "JUAN" RICARDO Gle

[redacted]

[1] Name of individual who is the subject of the record(s) sought.

[2] Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

[3] Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

[4] Signature of individual who is the subject of the record sought.

FORM DOJ-361